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December 21, 2004

Mary L. Cottrell, Secretary
Department of Telecommunication and Energy
One South Station, 2nd Floor
Boston, MA 02110

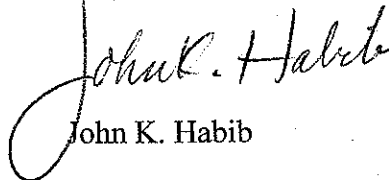
Re: D.T.E. 04-70 — Petition of Boston Edison Company and Commonwealth Electric Company d/b/a NSTAR Electric for Approvals Relating to the Issuance of Rate Reduction Bonds Pursuant to G.L. c. 164, § 1H

Dear Secretary Cottrell:

Enclosed please find the Consolidated Motion of Boston Edison Company and Commonwealth Electric Company d/b/a NSTAR Electric for a Protective Order in the above-referenced proceeding.

Thank you for your attention to this matter.

Very truly yours,


John K. Habib

Enclosure

cc: Service List
Joan Foster Evans, Hearing Officer

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company and
Commonwealth Electric Company
for Approvals Relating to the Issuance of
Rate Reduction Bonds Pursuant to G.L. c. 164, § 1H

D.T.E. 04-70

**CONSOLIDATED MOTION OF BOSTON EDISON COMPANY AND
COMMONWEALTH ELECTRIC COMPANY FOR A PROTECTIVE ORDER¹**

I. INTRODUCTION

On August 31, 2004, Boston Edison Company ("Boston Edison") and Commonwealth Electric Company ("Commonwealth") d/b/a NSTAR Electric ("NSTAR Electric" or the "Companies") filed with the Department of Telecommunications and Energy (the "Department") a Petition (the "Petition") for Approvals Relating to the Issuance of Rate Reduction Bonds ("RRBs"). The Petition seeks a financing order (the "Financing Order") from the Department approving the issuance of RRBs, pursuant to G.L. c. 164, §§ 1G and 1H and the Boston Edison Restructuring Settlement Agreement approved by the Department in D.P.U./D.T.E. 96-23 (the "Settlement Agreement") and Commonwealth's restructuring plan (the "Restructuring Plan") approved by the Department in D.P.U./D.T.E. 97-111 and D.P.U./D.T.E. 97-111-A.

During the proceeding, the Company filed several exhibits in response to information and record requests issued by the Department and the Office of the Attorney

¹ This Motion is intended to supersede the Companies' Motion for Protective Order filed on August 31, 2004 in this proceeding. This Motion seeks protective treatment for all confidential exhibits filed in the proceeding since its inception.

General (the "Attorney General") that contained: (1) the Companies' projections of future energy prices and its forecasts of payments to be made pursuant to its existing purchase power agreements with MASSPOWER and Dartmouth Holdings, and PPAs with other parties; (2) the Companies' projections of future energy prices and its forecasts of payments to be made pursuant to Boston Edison and Commonwealth's Termination Agreement with MASSPOWER and Commonwealth's Purchase and Sale Agreement with Dartmouth Holdings; and (3) the buyout amounts for MASSPOWER and Dartmouth Holdings, as reflected in the securitization amount relating to each agreement.² For the reasons set forth below, the Companies seek a protective order from the Department to prohibit public disclosure of the proprietary, confidential and sensitive competitive information listed in Attachment 1, hereto (the "Confidential Exhibits").

II. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

² NSTAR Electric has agreed with MASSPOWER and Dartmouth Holdings, respectively, to protect the buyout amounts (see D.T.E. 04-61, Petition, Appendix A — NSTAR Electric/MASSPOWER Termination Agreement at § 10; D.T.E. 04-78, Petition, Appendix A — Commonwealth/Dartmouth Holdings Purchase and Sale Agreement; § 9.19). The disclosure of this information would compromise NSTAR Electric's ability to negotiate additional PPA termination agreements and would undermine MASSPOWER's and Dartmouth Holding LLC's ability to consummate their respective transactions with NSTAR Electric as described in more detail herein.

In interpreting the statute, the Department has held that:

... [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officers Ruling On the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50, at 4 (1996).

In practice, the Department has often exercised its authority to protect sensitive market information. For example, the Department has determined specifically that competitively sensitive information, such as price terms, are subject to protective status:

The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive. Proponents generally will face a more difficult task of overcoming the statutory presumption against the disclosure of other terms, such as the identity of the customer.

Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996). See also Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (the Department determined that price terms were protected in gas supply contracts and allowed Colonial Gas Company's request to protect pricing information including all "reservation fees or charges, demand charges, commodity charges and other pricing information").

Moreover, the Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter of public policy:

The Department recognizes that the replacement gas purchases . . . are being made in a substantially competitive market with a wide field of potential suppliers. This competitive market should allow LDC's to obtain

lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC's efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons.

The Berkshire Gas Company et al., D.P.U 93-187/188/189/190, at 20 (1994).

III. INFORMATION REGARDING THE COMPANIES' ANALYSIS OF FUTURE ENERGY COSTS AND THE BUYOUT AMOUNTS FOR THE MASSPOWER AND DARTMOUTH PURCHASE POWER AGREEMENTS IS PROPRIETARY, CONFIDENTIAL AND SENSITIVE AND WARRANTS PROTECTION FROM PUBLIC DISCLOSURE

The Companies request confidential treatment of information reflected in the Confidential Exhibits relating to: (1) price and payment forecasts used to compare the value of the bids to the Companies' existing PPAs; and (2) the buyout amounts for MASSPOWER and Dartmouth Holdings (see Attachment 1, hereto). The Companies are seeking protected treatment for the Confidential Exhibits for the following reasons.

With regard to those exhibits which include market forecast data, the market forecast data is considered proprietary by the company that produced it, and was provided to the Companies pursuant to a confidentiality agreement. More importantly, however, these projections must be protected from public disclosure because the Companies use this information to evaluate other PPA mitigation proposals, and value their existing PPAs. The Companies, as well as Cambridge Electric Light Company, have not yet completed the divestiture of all of their existing PPAs and are in active negotiations with other parties. If other parties had access to the details of the Companies' updated projections and assumptions regarding future energy prices and the value of their existing PPAs, the Companies' ability to negotiate the best deals possible on behalf of customers

would be compromised. In fact, public release of the information in the Confidential Exhibits will disclose the very types of information that the Department has previously and consistently held to be confidential because the release of such information would “seriously undermine” the Companies’ negotiating position and thus, result in customers not realizing the maximum amount of mitigation. Western Massachusetts Electric Company, D.T.E. 99-101, at 3 (2002), citing Boston Edison Company, D.T.E. 99-16 (1999); Western Massachusetts Electric Company, D.T.E. 99-56 (1999). See also Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34 (Tr. A at 19 (June 12, 2002)) and Cambridge Electric Light Company, D.T.E. 01-94 (May 9, 2002 Approval by the Department of Amended Motion of Cambridge Electric Light Company for a Protective Order).

Similarly, the Department has explicitly acknowledged the potential harm to the purchasing utility from the disclosure of buyout amounts: “...protection from public disclosure of a buyout amount is appropriate since that information is an indication of a company’s forecast of market prices for power, projected market electricity prices, capacity factors and discount rates.” Western Massachusetts Electric Company, D.T.E. 99-101, at 3 (2000), citing Boston Edison Company, D.T.E. 99-16 (1999); Western Massachusetts Electric Company, D.T.E. 99-56 (1999). The Department has found this to be particularly important where, as here, the PPA assignment at issue is but one of many that the utility is seeking to terminate or restructure:

The PPA at issue here is but one of several that WMECo may negotiate. Disclosing the results here would permit future negotiating opponents to make inferences about WMECo’s confidential negotiating strategy. Given the confidential nature of this competitively sensitive material, the Department finds that public disclosure of this buyout amount could prove detrimental to WMECo, because it might seriously undermine the

Company's ability to maximize mitigation efforts and substantially harm WMECo's negotiating position for other PPAs.

Id.

In addition, disclosure of buyout amount information would adversely affect the ability of MASSPOWER and Dartmouth Holdings LLC to facilitate the respective termination agreements with NSTAR Electric by negotiating restructurings of other supply contracts, which currently support the operation of MASSPOWER and Dartmouth Holdings LLC (see D.T.E. 04-61 (Boston Edison/Commonwealth Motion for Protective Treatment, Affidavit of Jeffrey W. Bentz, General Manager of MASSPOWER); D.T.E. 04-78 (Commonwealth Motion for Protective Treatment, Affidavit of Michael J. Miller, Chief Executive Officer of Dartmouth Holdings LLC)). If counterparties to those supply contracts have access to the specific pricing terms of the NSTAR Electric/MASSPOWER Termination Agreement or the Commonwealth/Dartmouth Holdings Purchase and Sale Agreement, it would significantly impair MASSPOWER's and Dartmouth Holdings LLC's respective negotiating positions with these counterparties (see D.T.E. 04-61 (NSTAR Electric Motion for Protective Treatment, Affidavit of Jeffrey W. Bentz, General Manager of MASSPOWER, at ¶ 7); D.T.E. 04-78 (Commonwealth Motion for Protective Treatment, Affidavit of Michael J. Miller, Chief Executive Officer of Dartmouth Holdings LLC, at ¶ 7)).

Therefore, consistent with recent precedent, the Companies request that the Department protect the Confidential Exhibits listed in Attachment 1 from public disclosure for a period of three years from the date of the Department's final order in this matter. Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34 (Tr. 1 at 12-13 (July 1, 2002)). The Companies

recognizes that it is in the public interest to make submitted documents available to the public at some point in the future and believes that the three-year period balances: (1) the interests of the Companies' customers and the parties to the 2003 Auction with (2) the interest in making the material public.

Accordingly, both the information and the Companies' strategic use of the information presented in the Confidential Exhibits should be protected from public disclosure through the issuance of a protective order because the information is proprietary, confidential and competitively sensitive. The disclosure of this sensitive information would undermine the Companies' ability to maximize their mitigation efforts, which inures to the benefit of the Companies' customers. The Department has protected similar information relating to analyses of the benefits of restructured or terminated PPAs submitted in previous proceedings. Therefore, the Companies requests that the Department protect the Confidential Exhibits from public disclosure, consistent with G.L. c. 25, § 5 and Department precedent.

IV. CONCLUSION

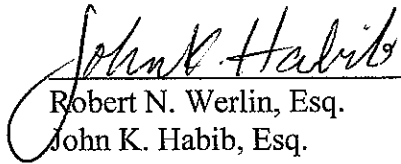
The Companies respectfully request that the Confidential Documents be held confidential, not be placed in the public docket and be disclosed only to the Department and the Attorney General. Parties to the case may request to review the exhibits, subject to the terms of a mutually agreed Non-Disclosure Agreement. This approach will allow the Department and parties to the proceeding to review the Companies' analysis of its Securitization Petition while ensuring that proprietary, confidential and sensitive market-related information will remain confidential.

WHEREFORE, for the reasons set forth herein, the Companies respectfully request that the Department allow the Companies' Consolidated Motion for a Protective Order.

Respectfully submitted,

**BOSTON EDISON COMPANY
COMMONWEALTH ELECTRIC COMPANY**

By Their Attorneys,


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Date: December 21, 2004

ATTACHMENT 1

- Exhibit NSTAR-GOL-1
- Exhibit NSTAR-COM-GOL-3, pages 13 through 15;
- Exhibit NSTAR-COM-GOL-4, pages 13 through 15;
- Attachment DTE-1-6(c)
- Attachment DTE-1-8
- Attachment DTE-1-14
- Attachment RR-DTE-1
- Attachment RR-DTE-2
- Attachment RR-DTE-5(a)
- Attachment RR-DTE-5(a), Attachment A
- Attachment RR-DTE-5(a), Attachment B
- Attachment RR-DTE-5(a), Attachment D
- Attachment RR-DTE-5(a), Attachment E
- Attachment RR-DTE-5(a), Attachment G
- Attachment RR-DTE-5(a), Attachment H
- Attachment RR-DTE-5(a), Attachment I
- Attachment RR-DTE-5(a), Attachment K
- Attachment RR-DTE-5(a), Attachment L
- Attachment RR-DTE-5(b)
- Attachment RR-DTE-5(b), Attachment A
- Attachment RR-DTE-5(b), Attachment B
- Attachment RR-DTE-5(b), Attachment D
- Attachment RR-DTE-5(b), Attachment E
- Attachment RR-DTE-5(b), Attachment G
- Attachment RR-DTE-5(b), Attachment H
- Attachment RR-DTE-5(b), Attachment I
- Attachment RR-DTE-5(b), Attachment J
- Attachment RR-DTE-5(b), Attachment L
- Attachment RR-DTE-5(b), Attachment M
- Attachment RR-DTE-5(c)
- Attachment RR-DTE-5(c), Attachment A
- Attachment RR-DTE-5(c), Attachment B
- Attachment RR-DTE-5(c), Attachment D
- Attachment RR-DTE-5(c), Attachment E
- Attachment RR-DTE-5(c), Attachment G
- Attachment RR-DTE-5(c), Attachment H